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REMARKS

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeffrey D. Snell, (U.S. Patent No. 5,792,204). Applicant respectfully traverses this rejection.

Throughout this prosecution, the Examiner has repeatedly provided a blanket statement that "Snell does not explicitly teach displaying the selectable subset of commands as a function of the device. However, the examiner takes Official Notice that it is old and notoriously well known to have context-sensitive commands, and to display them for user selection by voice (or of course, by keyboard or mouse) from a displayed menu. It would have been obvious to an artisan at the time of the invention to display the available commands to avoid wasting user time by having her remember the precise available command words." Applicant respectfully asserts that this line of rejection is factually incorrect and does not address the actual claimed invention.

Applicant has previously pointed out language in the pending claims not present in the Snell reference and not taught or fairly suggested by some generic understanding of voice recognition in the prior art. In each instance, the response to Applicant's arguments is the assertion that the "blanket language" above universally covers all aspects of this prosecution without providing further substantive comment or analysis. Most recently, the Examiner has asserted that the Final Rejection was proper and not in need of further explanation or reconsideration because Official Notice *per se* was not "formally challenged" and provided references allegedly supporting the Examiner's position of Official Notice.

In an attempt to avoid further arguments limited to form and to focus on the merits of the art and the claims, Applicant, as encouraged by the Examiner formally challenges the sufficiency of Official Notice taken in every instance in the present case and requests, consistent with the patent laws and rules of practice that any and all rejections presented are fully and explicitly supported by legally sufficient, relevant, and analogous prior art references.

Furthermore, Applicant asserts that the claims must be considered as a whole and that the Examiner's selective isolation of elements and generically deeming that

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they are "known" is improper. In January of this year, the Court of Appeals for the Federal Circuit squarely addressed this situation.

In making the assessment of differences, section 103 specifically requires consideration of the claimed invention "as a whole." ***Inventions typically are new combinations of existing principles or features.*** *Env'tl. Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698 (Fed. Cir. 1983) (noting that "virtually all [inventions] are combinations of old elements."). The "as a whole" instruction [**9] in title 35 prevents evaluation of the invention part by part. ***Without this important requirement, an obviousness assessment might break an invention into its component parts (A + B + C), then find a prior art reference containing A, another containing B, and another containing C, and on that basis alone declare the invention obvious. This form of hindsight reasoning, using the invention as a roadmap to find its prior art components, would discount the value of combining various existing features or principles in a new way to achieve a new result - often the very definition of invention.*** *Chance v Ruiz*, 357 F.3d 1270; 2004 U.S. App. LEXIS 1325; 69 U.S.P.Q.2D (BNA) 1686 (CAFC 2004) (Emphasis Added)

The present claims relate to the use of a medical device programmer to program or otherwise control an implantable medical device (IMD). The IMD is a separate and distinct component having its own processor, its own capabilities, and its own unique parameters. Likewise, the medical device programmer is a separate and distinct device having its own processor and capabilities. The claims indicate that the programmer will communicate with the IMD, determine a state that *the IMD* is in and then, based upon *that state* provide for a certain subset of commands that are useable with the *programmer*.

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Snell does not teach nor suggest this concept. The Examiner has acknowledged this fact. A general assertion based upon "Official Notice" or provided by nonrelevant /non-analogous references that other systems provide for a subset command structure *does not teach the claimed invention* even if combined with Snell.

Even assuming *arguendo* that "context sensitive commands" exist in various applications and that such "context sensitive commands" can be displayed in a menu, that would not teach a medical device programmer, having speech recognition capabilities, communicating with an IMD, determining what state that IMD is in, and providing a subset of voice commands based upon that state. Applicant respectfully requests consideration of the claims as a whole.

Furthermore, the statement that "it would have been obvious . . . to display the available commands to avoid wasting user time by having her remember the precise available command words" does not lead to a modification of Snell that teaches the presently claimed invention. That is, even if *arguendo* Snell was modified to list directories or commands, there is no teaching or suggestion to have the programmer communicate with the IMD, determine the IMD state, identify an appropriate subset of commands and provide that subset as provided for in the present claims.

Claim 1 includes "a processor arrangement coupled to the speech recognition circuit . . . and in communication with the implanted medical device, the processor arrangement configured to receive data indicative of an implanted medical device state from the implanted medical device and automatically select the subset of commands as a function of the device state." As indicated, Snell utilizes commercial voice recognition software to permit voice control of a medical device programmer. The Examiner cites Col. 5 line 67 to Col. 6, line 2 which states that a list of commands that are recognized by the system are stored within a memory of the programmer. There is no teaching (as acknowledged by the Examiner) that Snell provides a subset of commands; furthermore there is no teaching that a state of the IMD determines which subset to utilize; nor is there any teaching that the IMD communicates its present state to the programmer and based upon this communicated state the subset of commands is automatically selected by the programmer.

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Thus, the inquiry is not whether speech recognition has ever been utilized to define different lists of recognized words, but rather would one of ordinary skill in the art have been motivated to modify a medical device programmer to include voice recognition capability, define subsets of commands, interrogate an IMD, determine an IMD state and automatically select a subset of commands based on the state of the IMD. No reference or combination of references teaches or suggests the invention as claimed.

Applicant respectfully asserts that the claims are in condition for allowance and requests notice of the same. Should any issues remain outstanding, the Examiner is respectfully urged to telephone the undersigned to expedite prosecution.

Respectfully submitted,

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Daniel G. Chapik
Registration No. 43,424
MEDTRONIC, INC.
Telephone: (763) 514-3066
Facsimile: (763) 514-6982
Customer No. 27581